

1 EDMUND G. BROWN JR., Attorney General  
of the State of California

2 JAMES M. LEDAKIS

Supervising Deputy Attorney General

3 CARL W. SONNE, State Bar No. 116253

Deputy Attorney General

4 110 West "A" Street, Suite 1100

San Diego, CA 92101

5 P.O. Box 85266

6 San Diego, CA 92186-5266

Telephone: (619) 645-3164

7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**  
10 **BOARD OF OCCUPATIONAL THERAPY**  
11 **OF THE DEPARTMENT OF CONSUMER AFFAIRS**  
12 **OF THE STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. OT 2005-64

13 EMILY VRKLJAN

470 North Coast Highway, Apartment H

14 Laguna Beach, California 92651

Occupational Therapist No. OT 8489

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Heather Martin ("Complainant") brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Occupational Therapy.

21 2. On or about October 12, 2005, the Board of Occupational Therapist issued  
22 License Number OT 8489 to Emily Vrkljan ("Respondent"). This license will expire on January  
23 31, 2010 unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Occupational Therapy  
26 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All  
27 section references are to the Business and Professions Code ("Code") unless otherwise indicated.

28 4. Section 125.3 of the Code provides, in pertinent part, that the Board may

1 request the administrative law judge to direct a licentiate found to have committed a violation or  
2 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
3 and enforcement of the case.

4           5.       Section 482 of the Code states:

5               Each board under the provisions of this code shall develop criteria to  
6 evaluate the rehabilitation of a person when:

7           (a) Considering the denial of a license by the board under Section 480; or

8           (b) Considering suspension or revocation of a license under Section 490.  
9 Each board shall take into account all competent evidence of rehabilitation  
furnished by the applicant or licensee.

10           6.       Section 490 of the Code states:

11           A board may suspend or revoke a license on the ground that the licensee  
12 has been convicted of a crime, if the crime is substantially related to the  
13 qualifications, functions, or duties of the business or profession for which the  
14 license was issued. A conviction within the meaning of this section means a plea  
15 or verdict of guilty or a conviction following a plea of nolo contendere. Any  
action which a board is permitted to take following the establishment of a  
conviction may be taken when the time for appeal has elapsed, or the judgment of  
conviction has been affirmed on appeal, or when an order granting probation is  
made suspending the imposition of sentence, irrespective of a subsequent order  
under the provisions of Section 1203.4 of the Penal Code.

16           7.       Section 493 of the Code states:

17           Notwithstanding any other provision of law, in a proceeding conducted by  
18 a board within the department pursuant to law to deny an application for a license  
19 or to suspend or revoke a license or otherwise take disciplinary action against a  
20 person who holds a license, upon the ground that the applicant or the licensee has  
21 been convicted of a crime substantially related to the qualifications, functions, and  
22 duties of the licensee in question, the record of conviction of the crime shall be  
conclusive evidence of the fact that the conviction occurred, but only of that fact,  
and the board may inquire into the circumstances surrounding the commission of  
the crime in order to fix the degree of discipline or to determine if the conviction  
is substantially related to the qualifications, functions, and duties of the licensee in  
question.

23           As used in this section, "license" includes "certificate," "permit,"  
24 "authority," and "registration."

25           8.       Section 2570.28 of the Code states:

26           The board may deny or discipline a licensee for any of the  
27 following:

28           (a) Unprofessional conduct, including, but not limited to, the  
following:

.....

1 (c) Violating or attempting to violate, directly or indirectly, or  
2 assisting in or abetting the violation of, or conspiring to violate, any provision or  
term of this chapter or any regulation adopted pursuant to this chapter.

3 .....  
4 (e) Conviction of a crime or of any offense substantially related to  
the qualifications, functions, or duties of a licensee, in which event the record of  
the conviction shall be conclusive evidence thereof.

5 9. Section 2570.29 of the Code states:

6 In addition to other acts constituting unprofessional conduct within the meaning  
7 of this chapter, it is unprofessional conduct for a person licensed under this  
chapter to do any of the following:

8 .....  
9 (b) Use to an extent or in a manner dangerous or injurious to himself or herself, to  
10 any other person, or to the public, or that impairs his or her ability to conduct with  
safety to the public the practice authorized by his or her license, of any of the  
following:

11 .....  
12 (3) Alcoholic beverages.

13 (c) Be convicted of a criminal offense involving the prescription, consumption, or  
14 self-administration of any of the substances described in subdivisions (a) and (b)  
of this section, or the possession of, or falsification of a record pertaining to, the  
15 substances described in subdivision (a) of this section, in which event the record  
of the conviction is conclusive evidence thereof.

16 (d) Be committed or confined by a court of competent jurisdiction for intemperate  
17 use of any of the substances described in subdivisions (a) and (b) of this section,  
in which event the court order of commitment or confinement is prima facie  
evidence of the commitment or confinement.

18 10. Section 4170 of the title 16, California Code of Regulations states:

19 A violation of any ethical standard of practice constitutes grounds for disciplinary  
20 action. Every person who holds a license, certificate or limited permit issued by  
the board shall comply with the following ethical standards of practice:

21 .....  
22 (b) Occupational therapy practitioners shall take reasonable precautions to avoid  
23 imposing or inflicting harm upon the client or to his or her property.

24 .....  
25 (2) Occupational therapy practitioners shall avoid relationships or activities that  
interfere with professional judgement and objectivity.

26 11. Section VII of the Disciplinary Guidelines adopted by the Board pursuant  
27 to title 16, California Code of Regulations, section 4144, and sections 481 and 482 of the Code  
28 states:

1 REHABILITATION CRITERIA

2 When considering the denial of an occupational therapy practitioner license under  
3 section 480 of the Business and Professions Code, the Board, in evaluating the  
4 rehabilitation of the applicant and his/her present eligibility for a license will  
5 consider the following criteria:

6 (1) The nature and severity of the act(s) or crime(s) under consideration as  
7 grounds for denial.

8 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
9 under consideration as grounds for denial, which also could be considered as  
10 grounds for denial under section 480 of the Business and Professions Code.

11 (3) The time that has elapsed since commission of the act(s) or crime(s)  
12 referred to in subdivision (1) or (2).

13 (4) The extent to which the applicant has complied with any terms of parole,  
14 probation, restitution, or any other sanctions lawfully imposed against the  
15 applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant.

17 When considering the suspension or revocation of the license of an occupational  
18 therapy practitioner on the grounds that the person licensed has been convicted of  
19 a crime, the Board, in evaluating the rehabilitation of such person and his/her  
20 present eligibility for a license, shall consider the following criteria:

21 (1) The nature and severity of the act(s) or offense(s).

22 (2) Total criminal record.

23 (3) The time that has elapsed since commission of the act(s) or offense(s).

24 (4) The extent to which the licensee has complied with any terms of parole,  
25 probation, restitution or any other sanctions lawfully imposed against the licensee.

26 (5) If applicable, evidence of expungement proceedings pursuant to section  
27 1203.4 of the Penal Code.

28 (6) Evidence, if any, of rehabilitation submitted by the licensee.

**CHARGES AND ALLEGATIONS**

12. On or about December 13, 2005, Respondent reported to work at Hoag  
Hospital, impaired from the consumption of alcohol the night before. Respondent admitted to  
staff at Hoag Hospital that she was impaired and her employment was subsequently terminated.  
Respondent left work and stopped at a restaurant where she ate and consumed alcoholic  
beverages. On her way home, Respondent was involved in an automobile accident and was  
arrested on the following charges: Vehicle Code section 23153(a) (driving under the influence:

1 alcohol / drugs: resulting in bodily injury), Vehicle Code section 23153(b) (driving with a blood  
2 alcohol level of .08 or more causing bodily injury), and section 4060 of the Code (possession of a  
3 controlled substance without a prescription).

4 13. On or about December 15, 2005, a felony complaint was filed against  
5 Respondent in Orange County Superior Court, Harbor Justice Center - Newport Beach Facility,  
6 styled as *The People of the State of California v. Emily Vrkljan*, Case No. 05HF2217. As  
7 amended on January 26, 2006, the complaint alleged violations of Vehicle Code sections  
8 23153(a) and 23153(b), and section 4060 of the Code (possession of a controlled substance  
9 without a prescription) ("DUI Case"). Enhancements were alleged in the DUI Case pursuant to  
10 Penal Code section 12022.7(a) (great bodily injury), and within the meaning of Penal Code  
11 sections 1192.7 and 667.5, in that Respondent personally inflicted great bodily harm on another  
12 person.

13 14. On or about March 16, 2006, the charges in the DUI Case were amended  
14 to add a fourth count for violation of California Vehicle Code section 23152(b) (DUI with blood  
15 alcohol level of .08 percent or above). On that same day, Respondent pleaded guilty to the  
16 fourth count, a misdemeanor, and the other counts were dismissed.

17 15. On or about October 10, 2006, Respondent reported for work at Lake  
18 Forest Nursing knowing that she was impaired from the consumption of alcohol the night before  
19 and the morning of October 10, 2006. Respondent was confronted at work due to her apparent  
20 impaired state. Respondent was tested at the request of Lake Forest Nursing and the test came  
21 back positive for alcohol. Respondent admitted to being impaired and was given the option to  
22 resign or be terminated. Respondent resigned her position as an Occupational Therapist at Lake  
23 Forest Nursing by letter dated October 23, 2006.

#### 24 FIRST CAUSE FOR DISCIPLINE

25 (Conviction: Driving Under The Influence)

26 16. Respondent's license is subject to disciplinary action under sections 490  
27 and 2570.28(e) of the Code in that on or about March 16, 2006, Respondent was convicted of an  
28 offense substantially related to the qualifications, functions, and duties of a occupational therapist

1 as set forth in paragraphs 12 through 14 above.

2 SECOND CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct)

4 17. Respondent's license is subject to disciplinary action under sections 490  
5 and 2570.28(a) of the Code in that on or about December 13, 2005, Respondent came to work to  
6 perform her duties as a licensed occupational therapist while impaired by alcohol or other  
7 substances as set forth in paragraph 12 above.

8 THIRD CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 18. Respondent's license is subject to disciplinary action under section  
11 2570.28(a) of the Code in that on or about October 10, 2006, Respondent came to work to  
12 perform her duties as a licensed occupational therapist while impaired by alcohol or other  
13 substances as set forth in paragraph 15 above.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Violation of Ethical Obligations)

16 19. Respondent's license is subject to disciplinary action under section  
17 2570.28(c) of the Code, in conjunction with section 4170 of title 16, California Code of  
18 Regulations, in that Respondent engaged in activities that interfere with professional judgement  
19 and objectivity and failed take reasonable precautions to avoid imposing or inflicting harm upon  
20 her clients or their property on October 10, 2006, during the performance of her work  
21 responsibilities as set forth in paragraph 15 above.

22 FIFTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 20. Respondent's license is subject to disciplinary action under section  
25 2570.29(b)(3) of the Code in that Respondent used alcohol in a manner dangerous or injurious to  
26 herself, to any other person, or to the public, or that impaired her ability to conduct with safety to  
27 the public the practice authorized by her license, on or about December 13, 2005, and, again, on  
28 or about October 10, 2006, as detailed in paragraphs 12 through 15, above.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 21. Respondent's license is subject to disciplinary action under section  
4 2570.29(c) of the Code in that Respondent was convicted of a criminal offense involving the  
5 prescription, consumption, or self-administration of alcohol as detailed in paragraphs 12 through  
6 14, above.

7 PRAYER


8 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
9 alleged, and that following the hearing, the Board of Occupational Therapy issue a decision:

10 1. Revoking or suspending Occupational Therapist Number OT 8489, issued  
11 to Emily Vrkljan;

12 2. Ordering Emily Vrkljan to pay the Board of Occupational Therapy the  
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
14 Professions Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: 24 April 2008

18  
19   
20 HEATHER MARTIN  
21 Executive Officer  
22 Board of Occupational Therapy  
23 State of California  
24 Complainant

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